

September 17, 2002

CECC-G

MEMORANDUM FOR CEHR-ZA (SUSAN DUNCAN)

SUBJECT: Availability of Appropriated Funds for Recruiting Giveaways and Promotional Items

1. REFERENCES:

- a. Principles of Federal Appropriations Law, Vol. I, Chapter IV, 4-128 to 4-39
- b. The Judge Advocate General's School, U.S. Army, Fiscal Law Deskbook

2. ISSUE:

May USACE use appropriated funds to purchase items to give to potential employees for recruiting purposes at a recruiting fair?

3. BACKGROUND:

USACE used appropriated funds to purchase items of value there were provided to USACE recruitment prospects (i.e. "recruiting giveaways") at the Black Engineer of the Year Award Conference. A press release subsequently declared the recruiting effort a success and mentioned the recruiting giveaways. Other Districts that had operated on the basis that expenditures for such items were unauthorized contacted HQUSACE and requested a review of the authority for such purchases.

4. DISCUSSION:

a. USACE offices may purchase promotional items for the purpose of recruiting provided that the appropriate decision makers make certain administrative determinations and subject to significant limitations. The general rule is that appropriated funds may not be used to purchase "gifts" for "personal use" of non-employees of the agency. *See, e.g.*, 75 Comp. Gen. 385 (1978); 55 Comp. Gen. 346 (1975); B-214833 (Aug. 22, 1984). This rule of thumb developed from the implication of the purpose statute which directs that appropriated funds may only be used for the purpose for which they were appropriated. *See* 31 U.S.C. Sec. 1301(a). Not every expenditure must be expressly authorized to be permissible. However, if it is not expressly authorized, a proposed expenditure must be analyzed under the "necessary expense" test. This test provides that an agency expenditure, even if not specifically authorized by law, is still permissible if it is reasonably necessary in carrying out an authorized function or will contribute materially to the effective accomplishment of that function, and is not otherwise prohibited by law. 66 Comp. Gen. 356 (1987). This analysis drives all of the Comptroller General's rulings on gifts.

b. Absent authority to purchase the items, purchase of recruiting giveaways is generally not authorized as a necessary expense. When, however, recruiting is an authorized agency purpose and there is a direct connection between the expenditure and an authorized agency purpose, the purchase of recruiting giveaways qualifies as a necessary expense. USACE regulations refer to its authority to recruit new employees and what accounts to charge for personnel devoted to the recruiting purpose. See generally, ER 37-345-10 page 7-17a, ER 5-1-3, page B-2. ER 690-1-955 page 6. Recruiting is an authorized purpose of USACE.

c. Comptroller General (GAO) decisions differentiate which kinds of promotional items demonstrate a connection between the purchase and authorized agency purpose and which are mere gifts. Promotional items permitted by the GAO are those nominal value items that have been determined by the agency to contribute to the gathering of information needed to recruit civilian employees, either by directly soliciting information about the potential applicants, or by providing the prospective applicants with information about the Army that is not readily available, such as the recruiter's phone number or website address. For example, the GAO conditionally approved the purchase of posters for recruiting giveaways when a potential employee was required to fill out information cards containing contact information needed by recruiters as a precondition to receiving a promotional poster subject to a determination by the agency that the costs of the item was in accordance with the Army regulation limiting such costs to low value items. *See In re: Prize Drawing at Army Recruiting Events*, B-230062 (22 December 1988). Additionally, the GAO permitted the purchase of jar openers and matchbooks printed with the agency's phone number and web address so that applicants could contact the agency for more information. *See In re: Expenditures of the Department of Veterans Affairs for the Oklahoma State Fair*, B-247563 (12 May 1993).

d. By contrast, the GAO has not authorized the purchase of items for distribution that serve as mere reminders of the applicant's visit with the recruiter. The GAO did not permit the distribution of pens, scissors, and shoelaces printed with an agency logo or slogan only. *See In re: Expenditures by The Department of Veterans Affairs Medical Center, Oklahoma City, Oklahoma*, B-247563 (5 April 1996). Likewise the GAO did not permit the purchase of baseball caps that did not serve any authorized recruiting purpose. *See in re: Purchase of Baseball Caps by the Department of Energy* (28 December 1995).

5. CONCLUSION:

a. In light of the GAO opinions, the purchase of promotional giveaways is permitted so long as the agency has made a determination that the giveaways and the circumstances surrounding their distribution indicate a direct connection between the expenditure and the agency's recruiting purpose. Further, the items purchased must be of nominal value as a minimum. The items should provide the applicant with contact information about the agency that is not readily available that furthers the recruiting purpose, such as a web site address or phone number. As an alternative, the items could be provided as an incentive for providing the agency with information about the potential

applicant that furthers the recruiting purpose. (e.g. a roster or list of potential candidates we would then use for follow-up recruitment contacts).

b. We recommend that you consult this office before providing any such items to recruitments candidates. If you have any questions, please contact me or Daniel Murray at (202) 761-8782.

/s/

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Legislation, Fiscal and General law